

The Appeals Board finds that claimant has not met his burden of proving that he sustained personal injury by accident arising out of and in the course of his employment with respondent. Claimant testified that he injured his low back on Wednesday, July 8, 1998, while delivering bags of salt to a customer for Ecowater Systems. According to claimant, he was carrying a 50-pound bag to the basement and ended up sliding backwards on his belly down the stairs. He apparently fell to the floor because claimant testified that when he stood up off the floor he immediately experienced pain in his lower back. This was the same area of his back where he had surgery performed approximately nine months earlier following a nonwork-related automobile accident. Claimant described his pain and numbness as being

the exact same symptoms that he had before the surgery. Nevertheless, claimant continued to work the rest of that day and the next before requesting medical treatment.

Claimant says he reported this accidental injury to his supervisor, Robert Caskey. Mr. Caskey testified and contradicted many of claimant's statements. As to the alleged accident on July 8, Mr. Caskey agreed claimant said that he slid down some steps carrying some salt but did not mention that he had been injured. He described claimant as being upset at the customer at having such a weird access to the basement. Mr. Caskey denied that claimant ever told him that he had been injured on the job. What Mr. Caskey did remember was that claimant returned to work the morning of July 8, 1998 after being gone for a camping trip over the Fourth of July holiday. Claimant said he had injured his back while being pulled on an innertube by a boat. Claimant admits his back was sore following the boating incident and that he requested light duty when he returned to work on July 8. Claimant denies, however, that he told Mr. Caskey about being thrown from the innertube and landing on his back, being stunned, and being lifted out of the water. According to claimant, he tried innertubing but it made him uncomfortable so he just rolled off the innertube, flagged the boat, and they circled around and got him. He had a little discomfort and soreness in his lower back so when he went back to work on July 8, after the Fourth of July holiday, he asked for light duty.

Mr. Caskey's wife, Jan Caskey, who also works at Ecowater Systems testified and essentially corroborated her husband's version of the conversation between claimant and Mr. Caskey. Jan Caskey testified she overheard a portion of the conversation. Claimant denies Jan Caskey was anywhere in the vicinity when that conversation occurred.

As stated above, claimant was involved in an automobile accident the summer of 1997 which resulted in low back surgery being performed October 3, 1997. Claimant returned to work the end of October 1997 with light duty restrictions. But within a few days claimant returned to full duty work and continued to perform full duty until July 8, 1998. During this time, claimant said he experienced no problems with his back from work whatsoever.

The only medical report introduced into evidence is the July 14, 1998 report of Dr. Edward J. Prostic. The history given to Dr. Prostic by claimant does not mention an injury resulting from a fall down steps. The report reads:

Mr. Wales reports injury during the course of his employment July 9, 1998. He was delivering 2,000 pounds of salt in 50 pound bags. From repetitiously bending, twisting, and lifting he aggravated his low back. No medical care has been rendered thus far. He has not returned to work since July 9th.

Claimant testified at preliminary hearing to a specific on-the-job accident on July 8, 1998 when he fell down some steps while carrying a 50-pound bag of salt. He described experiencing an immediate onset of low back pain and, shortly thereafter, numbness in both legs. Yet, claimant did not give such a history to Dr. Prostic whom he saw six days later. Furthermore, claimant's actions following his alleged accident were not

consistent with a traumatic injury of the nature he described. Especially for someone who had just nine months earlier undergone back surgery for similar symptoms. Claimant described his symptoms as being similar to those he experienced before his surgery. And, he had not experienced those symptoms since his surgery. Nevertheless, he continued to work that day and the next; lifting and carrying 50-pound bags of salt. When he finally requested medical treatment two days later and it was denied, claimant did not obtain treatment on his own. He was apparently referred by his attorney to Dr. Prostic. Claimant did not describe Dr. Prostic's examination as treatment however.

- A. Just in general. I just felt really, really sore and the numbness occurred a lot more when I had been sitting for a period of time, when I'd get back in the truck or whatever.
- Q. Did you report that to anyone at the company?
- A. Yes, Friday morning.
- Q. Who did you report it to?
- A. I believe everybody; Robert Caskey, Craig.
- Q. At that time did you seek medical attention?
- A. No.
- Q. When did you seek medical attention?
- A. I still haven't.

In his brief, claimant argues that the Board should affirm the Administrative Law Judge's decision to award benefits because the Judge had the opportunity to personally observe the witnesses testify and assess their demeanor and credibility. Generally, the Appeals Board does give some deference to an ALJ's determination of witnesses' credibility in such cases. In this instance, however, the greater weight of the evidence contradicts claimant's contention that his back injury occurred at work as alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order dated August 27, 1998, entered by Administrative Law Judge Steven J. Howard should be, and is hereby, reversed and preliminary hearing benefits are denied.

IT IS SO ORDERED.

Dated this ____ day of December 1998.

BOARD MEMBER

c: Michael R. Lawless, Overland Park, KS
Steven J. Quinn, Kansas City, MO
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director